

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER

☐

DATE

March 25, 2009

MOTOR CARRIER MATTER

☐

DOCKET NO.

2008-196-E

UTILITIES MATTER

☐

ORDER NO.

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

☒ NO ☐ YES

SUBJECT:

DOCKET NO. 2008-196-E - Combined Application of South Carolina Electric and Gas Company for a Certificate of Environmental Compatibility and Public Convenience and Necessity and for a Base Load Review Order for the Construction and Operation of a Nuclear Facility in Jenkinsville, South Carolina - Discuss with the Commission the Petition for Rehearing or Reconsideration on Behalf of the Friends of the Earth, the Petition for Reconsideration Filed on Behalf of South Carolina Energy Users Committee, and the Petition for Rehearing or Reconsideration Filed by Joseph Wojcicki.

COMMISSION ACTION:

Madam Chairman, I move that we deny the Petitions for Rehearing and/or Reconsideration of the SCE&G Base Load Review Orders filed by the Friends of the Earth (FOE), the South Carolina Energy Users Committee (SCEUC), and Mr. Joe.

With regard to the FOE Petition, the allegations of error are generic for the most part, simply stating that the Commission erred in approving the SCE&G Base Load Review Act Application where there was an alleged failure of the Company to meet its burden of proof under the provisions of the Siting Act and the Base Load Review Act. Madam Chairman, I move that we reaffirm the terms of Order No. 2009-104(A) in addressing those allegations of the Petition. There are four additional paragraphs of the FOE Petition that should be addressed specifically, however. Paragraph 1 of that Petition alleges that the Commission deprived FOE and other ratepayers of their property without due process of law, contrary to the Constitutions of the United States and South Carolina. FOE failed to raise this allegation at any point during the merits proceeding prior to the Petition, and I move that we deny the relief sought. Second, Paragraph 2 alleges error in approving the Combined Application where the Company allegedly failed to establish that public convenience and necessity justified permission to proceed with initial clearing, excavation, dredging and construction, contrary to Section 58-33-110(7). I move that this Commission reaffirm the reasoning stated in Order No. 2008-673, which fully explains our findings on that issue. Third, Paragraph 12 of the FOE Petition is unclear, but appears to state that this Commission should refuse to consider requests for modifications of the funding granted in the Base Load Review Orders, and hold the Company to "its bargain." I move that this Commission deny this relief, based on South Carolina Code Annotated Section 58-33-270 (E). This Code Section holds that, if circumstances warrant, the utility may petition the Commission, with notice to ORS, for an order modifying any of the schedules, estimates, findings, class allocation factors, rate designs, or conditions that form part of any base load review order issued. The relief sought may or may not be granted, but the Company may certainly file such a Petition under the statute. The relief sought by the FOE Petition in Paragraph 12 appears to be contrary to the express terms of this statute and should be denied.

Fourth, Paragraph 13 of the FOE Petition simply quotes the general grounds for reversal of an administrative order found in the Administrative Procedures Act. No specific instances of a violation of any of the grounds are given. I therefore move for rejection of this generic allegation of error, as well as for denial of the entire FOE Petition.

SCEUC also filed a Petition for Reconsideration of the SCE&G Base Load Review Orders. As a preliminary matter, I need to point out that SCEUC misquotes an important section of our Order No. 2009-104(A) at page 97, when it states: "...the Commission reads the statute as authorizing the Company to include a reasonable capital cost contingency in its filings, for evaluation and approval by this Commission. There is no logical or policy reason to read the statute." Unfortunately, SCEUC left out the word "otherwise" at the end of the last quoted sentence. The sentence in the Order actually reads "There is no logical or policy reason to read the statute otherwise." Obviously, the word "otherwise" makes a significant difference in the meaning of the sentence. Madam Chairman, I am sure this omission was inadvertent, but simply wanted the record to be clear as to the position we took in regard to the statute. Further, I believe that SCEUC's various allegations of error should be rejected. I move that we reaffirm the language of Order No. 2009-104(A), which explained our holding that South Carolina Code Annotated Section 58-33-270(B)(2) allows this Commission to establish a capital cost contingency as a component of capital costs, not just a contingency for the anticipated schedule. Further, I move that we explicate and reaffirm our holdings that the capital cost contingency is proper, even in addition to the authorized inflation indices, and that the established figure of approximately \$438,293,000 for the capital cost contingency is reasonable.

I also move that we hold that amounts owing to inflation of the capital cost contingency are proper, and that the order modification provisions of the Base Load Review Act do not obviate the need for the establishment of the capital cost contingency. And lastly in regard to SCEUC, Madam Chairman, I have to admit to being puzzled by SCEUC's further allegation that the Commission erred in concluding that the intervenors in this matter failed to meet their burden of proof with respect to the capital cost contingency. There is no such holding in our Order, so I move that this allegation of error be rejected, along with the other allegations of SCEUC's Petition for Reconsideration.

Lastly, Madam Chairman, Mr. Joseph Wojcicki (Mr. Joe) also filed a Petition for Rehearing or Reconsideration of Order No. 2009-104(A). Mr. Joe disputes the Commission's findings about the water supply for the new nuclear units in that Order, as well as the denial of his motion to move the location of the new reactors to a location near the Atlantic Ocean. Mr. Joe further contests this Commission's findings on the number and length of the transmission lines that will serve the new plants, and disputes some other evidentiary points. I move that we deny Mr. Joe's Petition, because of the reasoning and analysis already given in Order No. 2009-104(A).

Accordingly, Madam Chairman, as previously stated, I move that we deny all three Petitions for Rehearing and/or Reconsideration filed with this Commission with regard to the SCE&G Base Load Review Orders, and reaffirm this Commission's findings in Order No. 2009-104(A).

PRESIDING: Fleming

SESSION: Regular

TIME: 2:30 p.m.

	MOTION	YES	NO	OTHER
CLYBURN	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
FLEMING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MITCHELL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WRIGHT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

(SEAL)



RECORDED BY: J. Schmieding